IN THE HON'BLE HIGH COURT OF CHHATTISGARH, AT BILASPUR

Single Bench

SECOND APPEAL No. 153 /2006

UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

APPELLANT/ DEFENDANT : Sadaram, S/o. Ramji kalar, aged about 42 years, R/o. Village-Salehbhatti, Tahsil-Mohala, District-Rajnandgaon (C.G.).

VERSUS

RESPONDENTS PLAINTIFFS

1. Jhaduram, S/o. Balaram Kalar, aged about 40 years, R/o. Sitagaon, Tahsil-Mohala, Distt. Rajnandgaon (C.G.)

2. (A) Shanta Bai, W/o. Bankerao, aged about 60 years.

(B) Kanbai, D/o. Bankerao, aged about 32 years.

(C) Chitran Bai, D/o. Bankerao, aged about 24 years.

(D) Surtilal, S/o. Bankerao, aged about 28 years.

(E) Mohan, S/o. Bankerao, aged about 26 years.

All are resident of Village-Salehbhatti, Tehsil-Mohala, Distt. Rajnandgaon (C.G.)

3. Atmaram, S/o. Dhaduram Kalar, aged about 42 years, R/o. Village Muramgaon, Tehsil-Dhanora, Distt. Gadhchirolli (Maharashtra).

Respondents/ Defendants

4. Varlival, S/o. Ramji, aged about 50 years.

5. Asharam, S/o. Ramji, aged about 40 years.

P.R. No. 902/06 Presented by Shri Rajnarayan Verma dated 01/4/06

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6. Rajaram, S/o. Ramji, aged about 36 years.

7. Dayaram, S/o. Ramji, aged about 34 years.

8. Maniram, S/o. Ramji, aged about 30 years.

9. Chain Bai, D/o. Ramji, W/o. Shobha, aged about 42 years.

10. Bachela Bai, D/o. Ramji, aged about 28 years.

All are resident of Village-Salehbhatti, Tahsil-Mohala, District-Rajnandgaon (C.G.).

11. State of Chhattisgarh, Through Collector – Rajnandgaon, Distt.Rajnandgaon (C.G.).

Rambha Bai shown as Appellant No.1 in the impugned judgement died during pendency of First Appeal L.R's. already on record.

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 153 OF 2006

APPELLANT : SADARAM

Vs.

RESPONDENTS : JHADURAM AND OTHERS

POST FOR JUDGMENT ON 12th JUNE 2006

Sd/-
Dhirendra Mishra
Judge

(22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 153 of 2006

Appellant **Sadaram**

Vs

Respondent **Jhaduram and others**

Appellant by Shri P.K.Verma, Sr. Advocate with Shri Sumit Verma, Advocate.

JUDGMENT
(Delivered on 12-6-2006)

Dhirendra Mishra, J

Heard on admission.

2. The instant second appeal is directed against the judgment and decree dated 27.12.2005 passed by the Court of District Judge, Rajnandgaon in Civil Appeal No. 51-A/2000 and by which the learned lower appellate Court has dismissed the appeal preferred by the appellant against the judgment and decree dated 05th July 2000 passed by learned Civil Judge, Class-I, Ambagarh Chowki, Distt-Rajnandgaon and the decree in favour of the respondents/plaintiffs was affirmed. (Parties hereinafter shall be referred to as per their description before the trial Court).

3. Plaintiffs filed a suit for declaration of title and possession stating therein that the plaintiffs and defendants No. 1 (a) to h and defendant No. 2 are relatives. The suit land was the property of one Sitaram who had three daughters namely Masibai, Jasibai and Lasiabai. Plaintiffs No. 1 and 2 are the sons of Masibai whereas plaintiff No. 3 Aatmaram is the son of Jasibai and the original defendant No. 1 Ramji was husband of Lasiabai. Sitaram died in the year 1960 and his daughters have also died. Sadaram (defendant No. 2) is son of Ramji. Defendant No. 2 after the death of his father Ramji got his name and his brother Ramlal's name recorded in the revenue record. Ramlal died after some time and

after the death of Ramlal, the land is recorded in the exclusive name of Sadaram, though defendants No. 1 and 2 are jointly entitled for only 1/3rd share and plaintiffs are entitled for one share each of the suit land. It was further pleaded that after the death of Sitaram, his three daughters jointly inherited his property, however, the plaintiffs permitted the defendants to cultivate the suit land on their behalf and the expenditure towards cultivation was borne by all of them. The land was illegally recorded in the name of Sadaram by the revenue authorities and the order dated 23/10/1989 passed by Sub Divisional Officer is void. Hence the plaintiffs claimed for 2/3rd share and also made a prayer for possession over their share of the land.

4. In the joint written statement defendants No. 1 and 2 stated that Masibai and Jasibai died during the lifetime of Sitaram. Sitaram became blind 10-12 years prior to his death and during this period defendant No. 2 brought him to his house and looked after him. In the last years of his life Sitaram executed a deed in favour of defendant No. 2 and his brother Ramlal and on the basis of that deed the lands were recorded in their names in the revenue record and two years after the above mutation Sitaram died. It is further averred that defendant No.2 Sadaram came into possession over the suit land as title holder during the lifetime of Sitaram and since then he is cultivating the same as owner and the plaintiffs did not have any interest thereafter.

5. On the basis of pleadings of the respective parties, learned Civil Judge framed issues and after recording the statements of the witnesses, decreed the suit with a finding that the suit land bearing Khasra No. 67/1 was the property of Sitaram, the plaintiffs are entitled for 2/3rd share, mutation in the name of defendant No. 2 and his brother Ramlal is illegal, the suit is not barred by law of limitation, defendants have not perfected their title by adverse possession and that Sitaram did not execute any deed in favour of defendant No. 2. However, issue No. 8 was decided against the plaintiffs and it was held that the plaintiffs have failed to prove that the defendants were in possession of the suit land with their permission. Accordingly, the suit was decreed to the effect that plaintiffs No. 1 & 2 jointly and plaintiff No. 3 are entitled for 1/3rd share each over the suit land and they are entitled for getting their share partitioned and obtain possession over the same.

6. The defendants preferred civil appeal against the above judgment and decree. However, the appeal preferred by the defendants was also dismissed by the lower appellate Court with an identical finding.

7. This second appeal has been preferred by the appellant/defendant on the following sole substantial question of law;

> *"Whether the finding of lower appellate Court in holding that the defendants and their predecessors in title had not acquired exclusive title over the suit property by adverse possession, is perverse as well as erroneous in law?"*

8. Learned counsel for the appellant submitted that from the evidence available on record it is clearly established that the other co-owners i.e. plaintiffs had been excluded from the possession over the suit land much prior to 12 years before the institution of the suit and therefore the defendants and their predecessors in title had acquired exclusive title over the suit property by adverse possession and the suit was hopelessly barred by time. He further submitted that both the Courts below have erroneously disregarded this aspect and therefore their finding is perverse and illegal.

9. I have heard learned counsel for the appellant.

10. From the pleadings of the respective parties it is not in dispute that the suit property originally belonged to Sitaram and the plaintiffs are the sons of his two daughters and as such are entitled for 1/3rd share each as claimed by them. The only question to be decided in this case is – whether both the Courts below were justified in ignoring the claim of the defendants that they and their predecessors in title were in exclusive possession of the suit land to the exlusion of the real owner and as such perfected their title through adverse possession and the suit was barred by law of limitation?

11. It is settled law that a person who claims adverse possession is required to show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other

party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

12. In the instant case it is not in dispute that the plaintiffs and the defendants are co-owners and the case of the defendants before the trial Court was based on gift deed executed by late Sitaram during his lifetime.

13. It is also settled law that the plea of title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. In the instant case, as already mentioned the case of the defendants is based on a gift deed purportedly executed by the original owner Sitaram in favour of defendant No. 2 and Ramlal, both the Courts below have recorded a finding of fact that the deed in question relied upon by the defendants does not confer any right or title to the defendants. Once the defendants who are co-owners in a suit for partition and possession, fail to establish their title to the suit land, the plaintiffs cannot be unsuited on the ground that the defendants are in exclusive possession of the suit land for more than 12 years and as such have perfected their title through adverse possession and the suit of the plaintiffs is barred by law of limitation.

14. On the basis of aforesaid analysis, this Court is of the considered view that both the Courts below have correctly decreed the suit of the plaintiffs and no substantial question of law as proposed by the appellant arises for adjudication of this appeal. The appeal is devoid of substance and the same deserves to be dismissed at the motion stage itself and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge